

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

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FIREMAN'S FUND INSURANCE COMPANY,
As subrogee of Evergreene Painting Studios, Inc.

Plaintiff,

-against-

450 WEST 31ST STREET OWNERS CORP.,
RENOVATIONS MECHANICAL CONTRACTING
INCORPORATED, TPC II CONTRACTORS, INC.,
METROMOTION PRODUCTIONS, INC. and
DAYLIGHT STUDIOS, L.L.C.

Defendants.
-----X

Civil Action No.:
08-CV-5365

Judge McMahon
Magistrate Dolinger

**NOTICE TO TAKE
DEPOSITION UPON
ORAL EXAMINATION**

PLEASE TAKE NOTICE, that commencing on the 28th day of October, 2008 at 11:00 a.m. at the offices of SPEYER & PERLBERG, 26 Broadway, 21st Floor, New York, New York, the defendant will take the deposition upon oral examination of the plaintiff by the adjuster of Fireman's Fund Insurance Company with most knowledge of this claim. Said deposition shall be conducted pursuant to Rule 26 et seq. of the Federal Rules of Civil Procedure before a qualified notary public or some other officer authorized by the law to administer oaths. The examination will continue from day to day until completed.


PLEASE TAKE FURTHER NOTICE, that the person or entity to be deposed shall produce at the deposition the following documents pursuant to Rule 30(b)(5) *et seq.* of the Federal Rules of Civil Procedures:

1. A copy of the claims file of Evergreene Painting Studios, Inc. with respect to the alleged water loss of March 20, 2006 at 450 West 31st Street, New York, New York., including, but not limited to the following items:
 - a. Proofs of Loss;

- b. Subrogation Receipts;
- c. Damage estimates;
- d. Documents showing the repair and/or restoration of allegedly damaged items including, but not limited to, receipts, invoices, and proof of payment;
- e. Documents showing the value of allegedly damaged items, including, but not limited to, receipts, bills, invoices, estimates, and appraisals;
- f. Photographs of all damaged items (color laser copies);
- g. Reports of adjusters, both from Firemen's Fund and from public adjusters;
- h. Reports of salvors, if any;
- i. Reports of the responding fire department;
- j. Reports of emergency repair companies, if any;
- k. Reports of accountants;
- l. Reports of any person or entity retained by plaintiff during the course of its investigation of the claim, to provide an opinion regarding the cause and origin of the alleged loss;
- m. Correspondence between Firemen's Fund and Evergreene Painting Studio regarding the alleged loss;
- n. Correspondence between Firemen's Fund and any other person or entity that it put on notice of its/his/her potential liability in this action.

Dated: Melville, New York
August 25, 2008

SPEYER & PERLBERG, LLP
Attorneys for Defendant
450 WEST 31ST OWNERS CORP.,
(incorrectly sued herein as 450 West 31st Street
Owners Corp.)

By: 
Gina M. Fortunato, Esq. (GF-7545)
115 Broadhollow Road Suite 250
Melville, New York 11747
(631) 673-6670
File No.: 08-143 DMP

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) SS.:
COUNTY OF SUFFOLK)

ANITA MATOS, being duly sworn deposes and says:

That deponent is not a party to this action, is over eighteen (18) years of age and resides in Deer Park, New York 11729. That on the 26th day August, 2008, deponent served the within ***NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION*** upon:


Robert W. Phelan, Esq.
Cozen O'Connor
45 Broadway Atrium, 16th Floor
New York, NY 10006
(212) 509-9400

the addresses designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.



ANITA MATOS

Sworn to before me this
26th day of August, 2008



NOTARY PUBLIC

GINA M. FORTUNATO
Notary Public, State of New York
No. 02F05078486
Qualified in Suffolk County
Commission Expires May 27 2011